

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
REPLY BRIEF**



75-1287

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 75-1287

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UNITED STATES OF AMERICA,

Appellee,

-against-

MANUEL RODRIGUEZ, a/k/a MANOLO RODRIGUEZ,

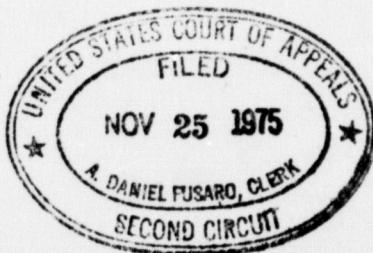
Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

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APPELLANT'S REPLY BRIEF

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Appellee,

-against-

MANUEL RODRIGUEZ,

Appellant.

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APPELLANT'S REPLY BRIEF

STATEMENT

This reply brief is in answer to the brief for the appellee, particularly with regard to Point II (pp. 9 to 16). The appellee insists on page 15 of his brief that, "The Fourth Amendment warrant requirement gives way to the "exigent circumstances" which developed, and the agents lawfully entered 18 Bunting Lane to arrest the aliens.

POINT I

The Government has failed to establish the applicability of the "exigent circumstances" rule. The "exigent circumstances"

rule and the cases applicable thereto, both the New York State cases and the Federal cases, was considered in the case of People of the State of New York v. Salazar, 373 N.Y.S. 2d 295 (decided Sept. 24, 1975, Sup. Ct., N.Y. Co., J. Liston F. Coon.)

While a review of the facts of the case may be relevant, the explanation of the court on page 301 is significant:

[2] Although the doctrine of "exigent circumstances" for the purpose of warrantless entry and arrest is accepted in this State (People v. McIlwain, 28 A.D.2d 711, 281 N.Y.S.2d 218), its traditional application was not the motivation for the entries here. Assuming that it were, the doctrine would be inapplicable. None of the activities or observations at the 30th Street apartment provided the initial probable cause to effect arrests to which exigent circumstances, if present, would then apply. The facts were insufficient to raise the level of suspicion and equivocal behavior to probable cause (People v. Davis, 36 N.Y.2d 280, 367 N.Y.S.2d 256, N.E.2d 818). The wrapping of paper and movement of furniture and the departure of persons carrying packages was as susceptible to innocent behavior as to culpable conduct (see People v. Brown, 24 N.Y.2d 421, 301 N.Y.S.2d 18, 248 N.E.2d 867). Exigent circumstances simply did not exist. The apartment was allegedly "utilized" by the defendant Sarmiento. He was already under arrest at a point some distance away. Until the apartment was entered and the defendant Lopez identified therein, there was no knowledge on the part of the police officers who, if anyone, was in the apartment. The arrest of Sarmiento on a public street did not create an exigent circumstance."

The cases in the Federal field were considered, particularly U.S. v. Griffin 6 Cir. 502 F.2d, 959 and U.S. v. Phillips, 9 Cir. 497 F.2d 1131. In both cases it was decided that the "exigent circumstances" doctrine was inapplicable. In the Griffin case the officers apparently entered the apartment to secure it pending arrival of the warrant. The entry was made at about 5:00 p.m. and the warrant did not arrive until 9:00 p.m. The prosecution sought to establish right of entry based upon

"exigent circumstances" in that there was danger of destruction of narcotics. The court held against the Government's claim indicating that there was no proof that anyone was in the apartment at the time of entry. In the Phillips case, the Appellant Court posed the question, "Assuming that the agents had probable cause to arrest Phillips, the question then became: "Was the entry into the building a valid entry?" The court found that the arrest was not the true purpose, but rather the purpose was to secure the apartment based upon the claimed "exigent circumstances" pending arrival of the warrant.

In the present case, the arrest of Galaes on the street did not establish knowledge on the part of the I.N.S. agents that other aliens were in the dwelling or indeed if aliens were present, that they were legally in the country. The mere arrest of Galaes on a public streets did not create an "exigent circumstance". The warrantless entry of I.N.S. Agent Jacobs did not authorize his three brother agents to make their warrantless entry, since they were particularly unaware that any occupants were in the dwelling, much less that there were legal aliens present. The conclusion is inescapable from the totality of the circumstances involved in this case, namely, that the agents were intent upon making an entry into the dwelling for the purpose of conducting a search thereof and obtain the necessary evidence, if available, in order to establish the guilt of this defendant of harboring the aliens who were sought.

CONCLUSION

The Government, having failed to establish the applicability of the "exigent circumstances" theory, any information or evidence developed after the warrantless entry was insufficient to establish the Government's cause of reasonable suspicion as urged by the Government.

Respectfully submitted,

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:SS.:

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